

TALLINN UNIVERSITY OF TECHNOLOGY

School of Business and Governance

Department of Law

Juulia Karjalainen

**Japan's limited definition and criminalization of child pornography
and its International legal obligations**

Bachelor's thesis

Programme European Union and International Law

Supervisor: Evhen Tsybulenko

Tallinn 2021

I hereby declare that I have compiled the thesis independently and all works, important standpoints and data by other authors have been properly referenced and the same paper has not been previously presented for grading.

The document length is 12,226 words from the introduction to the end of conclusion.

Juulia Karjalainen

(signature, date)

Student code: 166276HAJB

Student e-mail address: jukarj@ttu.ee

Supervisor: Evhen Tsybulenko, PhD. in Law and lector at TalTech

The paper conforms to requirements in force

.....

(signature, date)

Chairman of the Defence Committee:

Permitted to the defence

.....

(name, signature, date)

TABLE OF CONTENTS

ABSTRACT	4
INTRODUCTION	5
1. Japan's legal system	7
1.1. Ratified international treaties relating to child pornography	8
1.2. The relationship between Japan's domestic laws and international treaties	9
2. Japan's definition of child pornography and criminalization	12
2.1. Possible limitations on child pornography	13
2.2. Questionable area of Chakuero	20
3. Legislative limitations; excluding pictorial child pornography	23
3.1. International legal obligations regarding definition of child pornography	24
3.2. Freedom of expression: limitation on child pornography	25
3.3. Japanese obscenity laws: defining public welfare	26
4. Enhancing Japan's compliance with international treaties	29
4.1. Proposal for compliance	29
4.2. Proposal for a framework on ban of pictorial child pornography	32
CONCLUSION	33
LIST OF REFERENCES	36
Appendix 4. Non-exclusive licence	42

ABSTRACT

The thesis aim is to ascertain whether Japan complies with its international legal obligations regarding child pornography, that it agreed to by ratifying treaties. The thesis contains several ratified international legislations, used to examine Japan's legislations compliance to these obligations. From comparing Japan's legislation regarding child pornography, definition and criminalization, to international treaties concerning child pornography areas of non-compliance are found in Japan's legislation. These areas concern non-criminalization of viewing and accessing child pornography material, "chakuero" material corresponding to child erotica and pictorial child pornography, lolicon and shotacon, which is legal. It is found that Japan has an obligation to comply with international treaties that criminalize the aforesaid materials. Thus, Japan must amend its law regarding child pornography to be in compliance with ratified treaties. In the thesis different methods are offered to provide possible solutions for this amendment. These solutions encompass taking example from a different country's legislation, "blocking orders", assistance of governmental actors, private operators and police detections utilizing data-bases. It is concluded that the mentioned methods are needed in tandem for a comprehensive strategy of compliance.

Keywords: Child pornography, International treaties, Japan's legislation, Article 34 CRC, criminalization, chakuero

INTRODUCTION

For a time Japan was condemned for inadequate child pornography legislation. As, it contributed to production in a worldwide market. Due to critique by First world countries Japan's law of 1999 was amended by a statute in 2014 criminalizing the legislations shortcoming regarding possession of child pornography. However, despite the amendment Japan seems to violate obligations taken by ratifying international conventions regarding child pornography.¹ In Japan material, called "chakuro", depicts young girls in revealing clothes posed provocatively.² Previously, form of "enjo kosai" ("compensated dating") "joshi kosei" ("high-school girl"), involving girls aged 15 to 18, was legal.³ Furthermore, anime (cartoons) and manga (comic books) are increasingly popular worldwide.⁴ Sub-genres of these materials, "lolicon" (lolita complex) and "shotacon"(shotaro complex), have spread focusing their viewer base as youths. Commonly consisting pictorial rape of children by authority or family.⁵

Protection is required by society's helpless members, making it essential to examine child pornography. Progression of technology increases relevance, causing proliferation of child pornography illustrating existent and non-existent minors and emergence of new forms of committing crimes. Furthermore, conflict regarding the definition of child pornography prevails. Several international instruments guarantee rights of minors, many of which Japan ratified. Nevertheless, due to prevalence of child pornography and since compliance with obligations of these instruments is questioned, it is necessary to investigate Japan's legislations consistency with obligations.

¹ Schroeder, L. P. (2015). Around the world: Protecting victims of child pornography in japan. *Children's Legal Rights Journal*, 35 (2), 197-[ii]. pages 197-198

² HumanRightsNow. (2018). Report on child pornography in japan. Accessible: <http://hrn.or.jp/eng/wp-content/uploads/2018/02/HRN-Child-Pornography-Report-2018.02.07.pdf> pages. 4, 20. 24 November 2020

³ Ryu. K. (assistance from Andrea Varella). (2018). Japan, ECPAT, Country overview: A report on the scale, scope and context of the sexual exploitation of children. Accessible: <https://www.ecpat.org/wp-content/uploads/2018/04/ECPAT-Country-Overview-Japan.pdf> pages. 7-9. 24 November 2020

⁴ Sugimoto. Y. (2009) *The Cambridge companion to modern Japanese culture*. United States: Cambridge University Press. pages 236-237

⁵ Ryu. K. (assistance from Andrea Varella). (2018), *supra nota* 3, page 10

Principal research question of the thesis concentrates on international treaties Japan ratified, examining whether it adheres to treaties concerning definition and criminalization of child pornography. Ultimately examining whether Japan violates its responsibilities and how it could comply with the obligations. Additionally, seeking other solutions to restrict materials. Qualitative method of information gathering is utilized. Information from books and journals regarding relations between international and domestic law of Japan, interpretative methodology of international treaties, Articles pertaining to criminalization and definition of child pornography in Japan compared to international treaties and how freedom of expression and child pornography interact will be utilized. Furthermore, secondary sources, Luxembourg Guidelines and reports by Special Rapporteurs, are used to ascertain meaning of Articles of international instruments. The information will assist determining whether Japan adheres to obligations it has taken. Following this solutions will be supplied on a comparative method and journals utilized for alternative solutions.

On structure of thesis. Firstly, Japan's legal system and relationships between national laws and ratified international treaties are established, to determine hierarchy. Secondly, Japan's legislations definition and criminalization regarding child pornography is inspected and areas of conflict with international treaties identified for non-compliance. Thirdly, pictorial child pornography is focused on, determining whether definition of child pornography is too narrow and whether conduct must be criminalized. Finally, suggestions are provided regarding Japan's legislation on enhancing compliance using a comparative method. Additionally, examining other options.

1. Japan's legal system

Historically, Japan's legal system was based on Chinese Confucianist morals and law due to close relations.⁶ After Meiji Restoration, 1868, occidental legislation entered Japan, French law initiating impact. However, foremost affect arose from civil law system in Germany. Subsequently, common law system of the United States impacted Japan's legal system due to World War II.⁷ The existing system unifies these influences, creating a mixture of common and civil law built upon Japanese principles and heritage.⁸ Regarding sources of law of the legal system, six codes construct its foundation. The Constitution, adopted 1946, is the primary source of law. As, according to Article 97, no law or legal act contrary to it has impact. Underlying principles of the Constitution constitute: "non-violence and peaceful cooperation, regard for human rights and right to self-determination." Other legal sources include; "legislation by the Diet (Parliament), cabinet orders and ministerial decisions." In interpreting discordant laws, principle of *lex specialis* applies. Statutory law is a main source of legislation. Regarding interpretation of law there is no direct foundation for doctrine of *stare decisis*. Though this is contested. As, regarding judicial decisions there is absence of a provision indicating the position.⁹ However, in practice case law is influential. As, rarely are precedents created via Supreme Court repealed.¹⁰ Additionally, decisions are acknowledged, as sources of law in filling gaps in legislation and adhered to alongside other primary legislation. Exemplified by new rules emerging from case law and decisions progressing legislation.¹¹ While there is no constitutional court the Supreme Court has authority to declare law(s) unconstitutional. Nevertheless, exercise of this power is unutilized.¹² Customary law is a potential source of law. As, it is equivalent to legislation according "the Law on General Rules Regarding the Application of Law." Stipulated fulfillment of conditions. First, custom must not be

⁶ Hahn, E. J. (1981). The rights of newspaper reporters and the public welfare standard in Japan. *California Western International and Comparative Law Journal*, 11 (2), 189-222. page 192

⁷ Oda. H. (2009). *Japanese Law* 3rd ed. United States: Oxford University Press Inc., New York. pages. 13-22.

⁸ Haley, J. O. (1998). *The spirit of Japanese law*, United States: University of Georgia Press Athens, pages. 6, 14, 30-32.

⁹ Oda. H. (2009), *supra nota* 7, page 26-30, 43.

¹⁰ Ishida, T. (1979). Case law in Japan. *Int'l J. Legal info.*, 7 (2), 133-154 pages. 142-143

¹¹ Oda. H. (2009)., *supra nota* 7, pages 42-44

¹² Good, M. H. (1985). Freedom of expression in comparative perspective: Japan's quiet revolution, *Human Rights Quarterly*, 7 (3), 429-445 page. 432.

against morality or general order. Secondly, provisions must support custom or there must be gaps in law.¹³ If custom is not acknowledged by court it will not obtain force of law.¹⁴

1.1. Ratified international treaties relating to child pornography

Japan ratified several international treaties relating to child pornography. Though, enactment of Japan's Child Pornography Act, and amendment, arguably were due supranational persuasion to conform.¹⁵ Still, it is contestable whether the amended Child Pornography Act meets requirements Japan took by ratifying treaties. Three of which are relevant. Firstly, Japan ratified, on 22nd of April 1994¹⁶, the United Nations Convention on the Rights of the Child 1989, adopted on 20th of November 1989, (CRC).¹⁷The CRC commensurated children's rights to equal standing with human rights. Since, it contains same rights of children enshrined in the Universal Declaration of Human Rights. In the Convention paramount importance is given to protection of children and elimination of sexual abuse.¹⁸ Evident from the several articles emphasizing that "parties undertake to protect children from all forms of sexual exploitation and abuse taking all appropriate measures to prevent it."¹⁹ The Convention has been criticized for insufficiency of compliance mechanisms to ensure rights. For, allegedly national reports archiving advancement of rights are the sole enforcement mechanisms in absence of sanctions.²⁰ Due to potential weaknesses of the CRC the Commission of the Human Rights, at the United Nations, raised concerns of child pornography spreading via the internet. Prompting adoption of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child prostitution and Child Pornography (OPSC).²¹ Japan ratified The OPSC in 2005.²² An expansion of protective measures was brought by The OPSC, incorporating the internet within its reach. Thus, the United Nations

¹³ Oda. H. (2009), supra nota 7, page 51

¹⁴ Haley, J. O. (1998), supra nota 8, page 4

¹⁵ Takeuchi, C. (2015). Regulating lolicon: Towards Japanese compliance with its international legal obligations to ban virtual child pornography. *Georgia Journal of International and Comparative Law*, 44 (1), 195-[ii]. page. 209.

¹⁶ United Nations (1989). Convention on the rights of the child, Treaty Series, vol. 1577, page. 3; depositary notifications. Accessible: <https://treaties.un.org/doc/Publication/MTDSG/Volume%20I/Chapter%20IV/IV-11.en.pdf>, 30 December 2020

¹⁷ Jones, L. M. (1998). Regulating child pornography on the internet the implications of article 34 of the united nations convention on the rights of the child. *International Journal of Children's Rights*, 6 (1), 55-80, page. 55

¹⁸ Eko, L. (2009). Suffer the virtual little children: The european union, the united states, and international regulation of online child pornography. *University of Baltimore Journal of Media Law and Ethics*, 1 (1-2), 107-153. page. 113

¹⁹ United Nations, 11. Convention on the Rights of the Child, New York: 20 November 1989, Treaty series, Vol 1577. Articles 19, 34

²⁰ Engle, E. (2011). The convention on the rights of the child. *QLR*, 29 (3), 793-820. pages. 809-810

²¹ Eko, L. (2009), supra nota 18, page 114

²² United Nations Human Rights Office of the high Commissioner (1996-2014). Ratification of 18 International Human Rights Treaties: Japan. Accessible: <https://indicators.ohchr.org/> 30 December 2020

reconstructed child pornography as a universal problem infringing human rights.²³ Finally, in 2012, Japan ratified Council of Europe Convention on Cybercrime (Cybercrime Convention).²⁴ Which criminalizes child pornography depicting virtual and actual minors. Aim of the convention concerns computer-related crimes and establishing homogeneous international penal legislation regarding them, additionally establishing operational mechanism to guarantee compliance.²⁵

1.2. The relationship between Japan's domestic laws and international treaties

It is necessary to define relationships and superiority between international treaties Japan ratified compared to domestic legislation. For, in Japan execution of treaties occurs equally to statutory laws insofar that it is unnecessary to convert them to domestic legislation. One must regard the Constitution for clarification. Article 98 paragraphs 1 and 2 elaborate Constitutions primacy over national legislation, reinforcing obedience towards international treaties. Which leaves the relationship unclear between the laws. There is consensus that international treaties supersede national laws.²⁶ Confirmation is found in the clarification given by Japan's delegate to the Human Rights Committee, of national laws inferiority to treaties.²⁷ Furthermore, in 1981 Japan acceded to the Vienna Convention on the Law of Treaties. According which, national legislation cannot be basis of disregarding treaty obligations.²⁸ However, views diverge concerning international treaties status compared to Constitution. Priority of the Constitution dominating.²⁹ Additionally, treaties have force of law coming from their self-executing status invoking rights of individuals. Enhanced by statements, confirming self-executing status prompting to grant treaties suitable force, given to the United Nations Human Rights Committee. This self-executionary status is showcased by courts producing human rights for applicants by undertaking "sub silentio" treaty Articles. However, this is contradicted by courts not recognizing particular treaties per se are self-executory requiring implementation by legislative measures. Nevertheless, seemingly treaties explicitly lacking self-executing nature are exclusively denied such position.³⁰ Furthermore, conflicting

²³ Eko, L. (2009), supra nota 18, pages 115-117

²⁴ Council of Europe. Convention on Cybercrime. ETS No. 185. Chart of signatures and ratifications of Treaty 185. Japan. Accessible: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/signatures?p_auth=OjN6AYbX, 30 December 2020

²⁵ Williams, K. S. (2003). Controlling internet child pornography and protecting the child. Information Communications Technology Law, 12 (1), 3-24. pages 3-4

²⁶ Oda. H. (2009), supra nota 7, pages 40-41

²⁷ Port, K. L. (1991). The Japanese international law revolution: International human rights law and its impact in Japan. Stanford Journal of International Law, 28 (1), 139-172. page. 153

²⁸ Vienna Convention on the Law of Treaties. (1969-1973). Philippine Yearbook of International Law, 2, 117-151. Article 27

²⁹ Oda. H. (2009), supra nota 7, pages 40-41

³⁰ Port, K. L. (1991), supra nota 27, pages 153-155

national legislation is inferior to treaties, causing esteem of treaties as one of Japan's highest laws.³¹ Therefore, Japan must adhere to ratified international treaties over national law.

However, in practice utilization of international treaties is restrained. Since, a treaty's self-executing status is the decisive factor regarding forthright execution of laws. For, courts abstain from applying international treaty obligations lacking legally binding indications. Furthermore, courts avoid contesting legislatures soundness, by indirectly alluding to international treaties. Causing courts to developed ways to avert conflicts between national legislation and treaties. Firstly, to disregard "judicial review" an issue can be noted "highly political." Secondly, importance of public welfare may be invoked regardless unconstitutionality of issue, limiting decisions. Furthermore, court judgements indicate law, legitimacy of which is questioned based on unclear international obligations, is adjudicated constitutional if it is accepted in Constitution.³² Nevertheless, domestic courts give international law legal validity.³³ As, it is enforced via the Constitution's provisions by construing it as consistent with the Constitution.³⁴

In the OPSC and the CRC it is not stated that they are not self-executing. Japan cannot interpret treaties as "non-self-executing" or "directional", if provisions appoint specific compliance time after which influence on national legislation is direct.³⁵ CRC, in Article 49³⁶, and the OPSC, in Article 14,³⁷ express specific entry into force time. Thus, as neither instrument is 'directional', they seem self-executing. Therefore, rights subsumed in treaties may be invoked.

Regarding, courts disregard to international treaty obligations due to "highly political" issues. This is inconsequential concerning minor's rights, as courts continuously appeal and adapt international human rights legislation. Due to, Constitution and legislation having gaps in these areas.³⁸ Thus, courts are unlikely to proclaim issues of children's rights "highly political".

³¹ Takeuchi, C. (2015), *supra nota* 15, page 220

³² Ishibashi, K. (2015). Implementation of international law in Japanese courts. *Korean Journal of International and Comparative Law*, 3 (2), 139-170. pages 142-153

³³ Port, K. L. (1991), *supra nota* 27, page 155

³⁴ Ishibashi, K. (2015), *supra nota* 32, pages 139-170

³⁵ *Ibid.*, pages 141-153

³⁶ United Nations, 11. Convention on the Rights of the Child, New York: 20 November 1989, *supra nota* 19, Article 49 paragraphs 1-2

³⁷ Optional protocol to the convention on the rights of the child on sale of children, child prostitution and child pornography. (2002). *Netherlands Quarterly of Human Rights*, 20 (3), 387-392. Article 14 paragraphs 1-2

³⁸ Ishibashi, K. (2015), *supra nota* 32, pages 141-153

Secondly, on conduct being judged unconstitutional, yet not being revoked. In practice courts can discard claims of illegality regarding conduct if repealment of the illegal deed would be against “public welfare”.³⁹ “Public welfare” is discussed in section 3.2. However, it is unlikely that courts could use such defense. As, conduct breaching children’s rights would not be acceptable according to public welfare.

Finally, Japanese legislation that Constitution allows if legality is unclear in treaty obligations. Such defense is only used if it is reasonable to state that legality of an issue is not specified in a treaty.⁴⁰ This seems unfounded with OPSC and the CRC, as both express legality of acts clearly, exhibited in sections 2 and 3. Thus, if Japan is not adhering to international treaty obligations and there is discrepancy concerning the 2014 Amendment with obligations, no exceptions seem utilizable in avoiding that Amendment of 2014 must be amended to be consistent with treaty legislation.

³⁹ Ibid., pages 141-142

⁴⁰ Ibid., pages 151-153

2. Japan's definition of child pornography and criminalization

“Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children” is the national legislation governing child pornography. Criminalized conduct encompassed in the Act consists of: importation, production, exportation and possession of materials within ambit of child pornography. Interpretation of child pornography, designating individuals under 18 as “a child”, is entailed in Paragraph 3 of Article 2 of the Act. Child pornography signifies “electromagnetic containing recording media”, mediums displaying poses of juveniles within ambit of the law or photographs of minors. Poses incorporated in definition of the legislation comprise; Primarily, (i.), pose in which a child is conducting in intercourse or analogous action. Thereafter, (ii.), child in a pose where a further individual is contacting reproductive organs of the child or vice versa. Lastly, (iii.), pose of halfway or entirely nude child, notably displaying genitalia. Interpreted as sexual organs including adjacent region covering breasts and posterior. Condition of generating arousal in spectators’ is connected to the last and second poses.⁴¹ The statutes execution and safeguards are under Article 3 of the act. According which “breach of nationals, partaking in culture and artistry, scholarly research and press, freedoms and rights must be avoided.” Misuse of the Act for digressing from defending children’s rights and providing safeguards against sexual abuse and exploitation is prohibited. It is evident from the amendment that pornography depicting existing children is criminalized, due to mention of “identifiable children“. Since, that is wording of the 1999 Statute only applicable to “real” children.⁴² Article 3 of the act covering artistic and cultural activities, clarifies manga’s exclusion from the definition. As, “cultural and artistic activities“ alludes to Japanese Basic Act for the Promotion of Culture and the Arts, in which manga is acknowledged as significant medium of national tradition.⁴³ Additionally, legislation leaves legality of pseudo-photographs unclear. Nevertheless, utilizing recognizable minors is encompassed, thus recognizable pseudo-photographs are covered. Still, it is unclear whether concept of a child encompasses virtual pseudo-

⁴¹ Act on Regulation and Punishment of Acts relating to child prostitution and child pornography, and the protection of children. Act No 52 of May 26, 1999, translation from Japanese Law Translation. Accessible: <http://www.japaneselawtranslation.go.jp/law/detail/?id=2895&vm=2&re=> Article 2 (3). 16 January 2021

⁴² Takeuchi, C. (2015), *supra nota* 15, pages 209-210

⁴³ *Ibid.*, page 2010-211

photographs. However, indication regarding the legal status was presented in a 2016 ruling, concerning creation and sale of computer graphic images of bare youths.⁴⁴ Ruling by Tokyo District Court judged that “composite photographs or pseudo pornography constitutes child pornography.” The decisive factor being existence of a child and portrayal as a “real” youth.⁴⁵ The ruling indicates that if there is no actual child this would not constitute child pornography.

2.1. Possible limitations on child pornography

In 2014 Japan amended its Act on Regulation and Punishment of Acts relating to Child Prostitution and Child Pornography and the Protection of Children by criminalizing possession of child pornography.⁴⁶ Still, there might be areas of criminalization where it is not adhering to international standards. Japan criminalizes importation, exportation, production, offering, displaying and possession of child pornography.⁴⁷ However, volitional accession or viewing, encompassing viewing live recordings, of child pornographic material is not criminalized. Easy access of which was noted by the Special Rapporteur and U.N. Committee on the Rights of the Child (Committee).⁴⁸ Non criminalization of these conducts provides issues. As, albeit fraction of viewers of child pornography are contact offenders, individuals involved in the conduct are susceptible to offending as indicated by studies.⁴⁹ However, question arises whether viewing and accessing child pornography is criminalized in international treaties? The OPSC binds Parties to minimum obligations regarding criminal conduct subsumed within national legislation. Article 3 (1) (c) contains “producing, disseminating, distributing, importing, exporting, offering, selling or possessing child pornography.”⁵⁰ However, there is question regarding interpretation of international treaties. As, the wording is nebulous and there is lack of a decision-making organ to

⁴⁴ Kyodo, Staff report, Japan Times (2016). Graphic designer found guilty of child pornography in japan. Accessible: <https://www.japantimes.co.jp/news/2016/03/16/national/crime-legal/graphic-designer-found-guilty-child-pornography-japan/#.XhWdvBtS:IU> (March 16.2016.) 14 January 2021

⁴⁵ Ryu, K. and Varella, A. (2018), supra nota 3, page 19

⁴⁶ Schroeder, L. P. (2015), supra nota 1, page 197

⁴⁷ Act on Regulation and Punishment of Acts relating to child prostitution and child pornography, and the protection of children. Act No 52 of May 26, 1999, supra nota 41, Article 7 (1), (3), (4)-(6).

⁴⁸ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016). Report of the special rapporteur on the sale of children, child prostitution and child pornography on her visit to japan, U.N. Comm. on Hum. Rts., U.N. Doc. A/HRC/31/58/Add.1 paragraph 14 Accessible: <https://undocs.org/A/HRC/31/58/Add.1> , 9 January 2021 and United Nations Convention on the Rights of the Child, Committee on the Rights of child. (2019). Concluding observations on the combined fourth and fifth periodic reports of Japan, U.N. Doc. CRC/C/JPN/CO/4-5 paragraph 46 (a). Accessible: <https://undocs.org/CRC/C/JPN/CO/4-5> , 9 January 2021

⁴⁹ Witting, S. (2016). Regulation of Child Online Sexual abuse: Legal Analysis of International Law and Comparative Legal Analysis. page 10. Accessible: https://www.unicef.org/namibia/na.COP_Legal_Analysis.pdf , 9 January 2021

⁵⁰ Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography. (2002), supra nota 37, Article 3

make interpretations decisive. Still, a proposed “interpretative methodology” provides factors to consider. These being, application of general rule of interpretation under Vienna Convention on the Law of Treaties (VCLT) which by itself is inadequate needing factors such as; clearness and functionality -and coherence of interpretation to determine meaning of provisions.⁵¹VCLT paragraph 1 of Article 31 dictates that interpretation “must be executed according good faith and terms accorded ordinary meaning regarding context, taking into consideration treaty’s purpose.”⁵² Article 3 (1) (c) in its ordinary meaning may be read as exhaustive, only criminalizing the mentioned conducts. However, development of technology must be factored since, during drafting of OPSC, issues of viewing and accessing child pornography were unanticipated, but are now crucial to consider for the provisions to function in a competent manner.⁵³ Thus, the conducts should be interpreted widely. As, VCLT Article 31 states that “ordinary meaning of terms is understood in light of purpose of the treaty.”⁵⁴ Which, in the OPSC, is continuously protecting children.⁵⁵ Therefore, if interpreted widely “possession“ incorporates accessing and viewing child pornography. For, when images are accessed a website may download them within a computer. Yet, this interpretation may leave information outside scope of “possession“.⁵⁶ Furthermore, should possession be interpreted widely? Article 3 (1) (c) requires criminalization of “producing...or possessing for above purposes.” The wording may indicate possession needing to be affiliated with other conducts in the Article.⁵⁷ It is unclear whether possession itself is enough. However, some interpret wording widely to include simple possession. Which is supported by direct linkage regarding OPSC succeeding objective of Article 34 of CRC.⁵⁸ Covering “all forms of sexual exploitation and abuse”, not limited to monetary exploitation. Thus, commercial

⁵¹ Tobin, J. (2010). Seeking to persuade: a constructive approach to human rights treaty interpretation. *Harvard Human Rights Journal*, 23(1), 1-50. pages. 3-14.

⁵² Vienna Convention on the Law of Treaties, (1969-1973), supra nota 28, Article 31 paragraph 1

⁵³ Greijer, S. and Doek, J. Interagency working group, ECPAT (2019). Explanatory Report to the Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. page. 54. Accessible: <https://www.ecpat.org/wp-content/uploads/2019/09/OPSC-Guidelines-Explanatory-Report-ECPAT-International-2019.pdf> 15 January 2021

⁵⁴ Vienna Convention on the Law of Treaties, (1969-1973), supra nota 28, Article 31 paragraph 1

⁵⁵ Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography. (2002), supra nota 37, Preamlbe. pages 387-388

⁵⁶ Witting, S. (2016), supra nota 49, page 12

⁵⁷ Ugo Cedrangolo (2009), The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the jurisprudence of the Committee on the Rights of the Child. Innocenti Working Paper No. 2009-03. Florence, UNICEF Innocenti Research Centre. pages. 8-10. Accessible: https://www.unicef-irc.org/publications/pdf/iwp_2009_03.pdf 6 November 2020

⁵⁸ Vandenhole, W., Erdem Turkelli, G., and Lembrechts, S. (2019). Children’s rights a commentary on the convention on the rights of the child and its Protocols, Wouter 2019, Elgar Commentaries, Edward Elgar Publishing UK. pages. 129-135.

elements are not required for abuse and exploitation⁵⁹, indicating that possession would not need to be connected. Alluding to “simple possession” for self satisfaction being enough for criminalization. Comments by the Committee and Special Rapporteur affirm a wide interpretation. As, criminalization of mere possession received support in recommendations and reports.⁶⁰ For, Special Rapporteur, Maalla, insisted criminalization for deliberate accession and viewing of child pornography.⁶¹ Thereafter, endorsed by a 2016 report.⁶² Additionally, in Guidelines on implementation of OPSC the Committee consolidated that scope of “possession” is wide, simple possession is to be criminalized and criminalization regarding possession covers material “by whatever means”, referencing Article 2 (c) of the OPSC. Confirming inclusion of material not saved that may be accessed and viewed in the scope of “possession.”⁶³ Term “by whatever means” in Article 2 (c) is shown by travaux préparatoires as intended to be read widely. As, aim of the OPSC is to protect minors, the definition requires accordance to “ordinary meaning.” Therefore, considering the OPSC’s object, “by whatever means” must be interpreted to include accession and viewing where information is not saved on a computer.⁶⁴

Declarations by Special Rapporteur and the U.N. Committee on the Rights of the child, consisting of eighteen human rights experts, operate compelling influence in defining extent of the OPSC and CRC. For, both are U.N.’s “policy-level” motions. The Committee oversees implementation and adherence to instruments and is given recommendations on improvements Parties must make on children’s rights by the Special Rapporteur.⁶⁵

Regarding validity of wider interpretation of “possession” including accession and viewing. As stated, VCLT and coherence in reasoning by Committee and Special Rapporteur is not necessarily enough to provide determinative meaning for the OPSC. However, together these methods of interpretation with the next may produce determinative meaning. The U.N. monitoring

⁵⁹ Tobin, J. (2019). The un convention on the rights of the child: a commentary, Oxford Commentaries on International law. Oxford University Press. pages.1314-1316 and Grejjer, S. and Doek, J. (2016). Luxembourg Guidelines, Terminology guidelines for the protection of children from sexual exploitation and abuse, Adopted by the Interagency Working Group in Luxembourg, 28 January 2016, Luxembourg: ECPAT International and ECPAT Luxembourg. pages. 19, 22-23, 27. Accessible: <http://luxembourgguidelines.org/english-version/> 11 January 2021

⁶⁰ Takeuchi, C. (2015), supra nota 15, page 225

⁶¹ UN Human Rights Council Report, Report of the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, Najat M’jid Maalla, 13 July 2009, A/HRC/12/23, available at: <https://www.refworld.org/docid/4ab0d35a2.html> [accessed 9 January 2021] paragraphs 14 and 124 (iii).

⁶² Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016), supra nota 48, paragraphs 14, 74 (ii) and (iii)

⁶³ Grejjer, S. and Doek, J. Interagency working group, ECPAT (2019), supra nota 53, pages 66-69

⁶⁴ Tobin, J. (2019), supra nota 59, pages 1734-1736.

⁶⁵ Takeuchi, C. (2015), supra nota 15, pages 224-225

Committees adopted an interpretation used by the European Court of Human Rights (EctHR) into interpreting international agreements. According which elements of interpretation include: “appropriateness to attain treaty’s purpose, dynamicity to meet evolving standards and effective and practical safeguards.”⁶⁶ Through this interpretation the OPSC should be regarded as a “living instrument”. Interpreting Articles according modern forms of sexual offences, to guarantee children’s rights.⁶⁷ The Committee conceded the OPSC’s pertinence in modern day, reinforcing interpreting its Articles according such standards.⁶⁸ Therefore, this interpretation accounts for modern forms of possession encompassing viewing and accessing, when material is downloaded into computer memory, through succeeding objective of Article 34 CRC. Additionally, adhering to VCLT Article 31 for “possession” is understood in context of continuously protecting minors, in evolving technological environment. Thus, making narrow definition regarding meaning of “possession” unjust to aim of the OPSC. Wording “by whatever means” extends to material not covered by “possession” in material not downloaded, covering the potential gap. Thus, through this interpretation definition of “possession” in Article 3 (1) (c) is meant to be wide, covering “simple possession” as shown by its link to Article 34 CRC and accessing and viewing of child pornography.

Additionally, Article 34 of the CRC could criminalize accession and viewing of child pornography. As, encompassing obligation to protect minors from sexual exploitation and abuse is prescribed in Article 34. Meaning Article 34 is broader than corresponding Article in the OPSC. As, it is not limited to OPSC’s policies, applying to sexual abuse and exploitation in every mode. For coherence the documents’ nexus is supplementary.⁶⁹ Article 34 of CRC requires Parties “to protect minors from all forms of sexual exploitation and abuse.”⁷⁰Wording “all forms...” branches to viewing and accessing. Reinforced by The Committees general Comment No. 13 (2011). specifying “all forms” is all-inclusive.⁷¹ Thus, if viewing and accessing child pornography presents form of exploitation or abuse it is covered by the CRC. However, CRC lacks explanation regarding

⁶⁶ Tobin, J. (2010), supra nota 51, pages 20-21

⁶⁷ Greijer, S. and Doek, J. Interagency working group, ECPAT (2019), supra nota 53, page 18

⁶⁸ Committee on the rights of the child. (2014). Report of the 2014 day of general discussion: “digital media and children’s rights.” paragraph 46. Accessible: https://www.ohchr.org/Documents/HRBodies/CRC/Discussion/2014/DGD_report.pdf , 15 January 2021

⁶⁹ Tobin, J. (2019), supra nota 59, page 1314

⁷⁰ United Nations, 11. Convention on the Rights of the Child, New York: 20 November 1989, supra nota 19, Article 34.

⁷¹ UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011): The rights of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13, paragraph 17. Accessible: <https://www.refworld.org/docid/4e6da4922.html> [accessed 14 January 2021] Article 19 and Article 34 of the CRC are to be read in conjunction. See. Tobin, J.(2019), supra nota 59, pages 1310-1312

“sexual exploitation” and “sexual abuse”. Nevertheless, according to prevailing views meaning of “child sexual abuse” consist of following components: (1) sexual actions containing “abusive” conditions and (2) participation of a minor.⁷² Indicating sexual abuse requiring direct sexual activity. However, according prevailing view sexual abuse includes psychological abuse. For example, self gratification as viewer accesses abuse. Thus, accessing and viewing could constitute sexual abuse in its ordinary meaning if there is “sexual activity” and an “abusive condition”. Often, online sexual abuse involves commands from viewers to determine sexual actions of primary abusers and provision of payment.⁷³ Fulfilling criteria for sexual activity and abusive conditions. As, abusive conditions contains notable age differences and “inducement” entailing dominance through monetary or emotional means to ensure sexual abuse.⁷⁴

In addition, viewing and accessing could constitute “sexual exploitation” in meaning of the Article. Sexual exploitation, is sexual abuse against a minor involving interchange, among perpetrator, minor or third party.⁷⁵ This exchange encompasses pecuniary and tangible or intangible gains.⁷⁶ Accessing and viewing contains gainful exchange between third party (viewer) and perpetrator. As, perpetrator gains a market and viewer satisfaction from knowingly viewing material.⁷⁷ Furthermore, it is not unusual for viewers to participate in online child sexual abuse by determining primary abuser’s actions and providing payment.⁷⁸ Thus, situations where money and requests for violations are exchanged fulfill condition of exchange for gain, falling within “sexual exploitation.”

Although, Article 34 (c) “prevents recruitment and exploitative utilization of minors in pornographic performances and materials”, obligation to prevent extends to other forms of sexual exploitation, due to “obligation to protect” minors from “all forms”.⁷⁹ Child pornography’s deleterious consequences impact longterm accessors and viewers. Since, viewers may be incentivised to contact offend.⁸⁰ Additionally, viewing and accessing contribute to the market of

⁷² Tobin, J. (2019), *supra* nota 59, pages 1315-1316

⁷³ Greijer, S. and Doek, J. (2016), *supra* nota 59, pages 19, 22-23, 45-47

⁷⁴ Tobin, J. (2019), *supra* nota 59, pages 1316-1321.

⁷⁵ *Ibid.*, page 1314

⁷⁶ Greijer, S. and Doek, J. (2016), *supra* nota 59, page 27

⁷⁷ Doyle, M. (1999). Bad apples in cyberspace: The sexual exploitation and abuse of children over the internet. *Whittier Law Review*, 21 (1), 119-146. page.125.

⁷⁸ Greijer, S. and Doek, J. (2016), *supra* nota 59, pages 45-47

⁷⁹ Takeuchi, C. (2015), *supra* nota 15, page 223

⁸⁰ Doyle, M. (1999), *supra* nota 77, pages 120-125

child pornography, maintaining it.⁸¹ Such conduct should constitute criminal activity, since prerequisite for it is occurrence of child abuse. Effective deterrence of which must focus on makers and customers.⁸² Additionally, inducement into sexual activities by remote command, using monetary incentive, is common in sexual abuse regarding accessing and viewing of child pornography. Thus, in most cases Article 34 (a) “inducement of a child to engage in unlawful activity” seems fulfilled. As, viewing and accessing falls under “sexual abuse” in its ordinary meaning and cannot be considered “lawful activity”, due to the “abusive” element of inducement. Falling under Article 34 (a).⁸³

First part of Article 34 of the CRC requires “undertaking protection of minors from sexual abuse and exploitation.⁸⁴” Wording “undertake” compels Parties to commit “immediate and necessary measures to protect minors.” The aforesaid is accompanied by requirement to “take all... appropriate measures to prevent exploitative use in sexual activities and pornography.” Requiring prohibition of conduct causing abuse and exploitation.⁸⁵ Discernible from Committee’s General Comment No 4, providing that duties, concerning any sexual exploitation, of Parties include: “enactment and enforcement of prohibitive legislation”.⁸⁶ Arguably, the obligation requires more. Potentially, definition of what “take all appropriate measures to prevent” demands of Parties is ambiguous. However, Article 19 of the CRC and Article 34 are meant to be read together and definition regarding meaning of “all appropriate measures to prevent” is given for Article 19. Therefore, to comprehend requirements of Article 34, definition of Article 19 provides meaning. The Article necessitates that “appropriate measures...” encompass legislative measures⁸⁷, specifying a demand to forbid “all forms of violence” targeted at minors and penalize violating offenders. Sexual abuse and exploitation are encompassed in “violence”.⁸⁸ Thus, it seems that “take all appropriate measures to prevent” in its usual meaning, understood through Article 19,

⁸¹ Hindman, H. D. (2009). *The world of child labour: an historical and regional survey*. Armonk, N. Y.: M.E. Sharpe. Taylor & Francis Group- ProQuest Ebook Central, Accessible: <https://ebookcentral.proquest.com/lib/tuee/detail.action?docID=1899940> pages. 96-97. 10 February 2021

⁸² Noblett, K. (2015). Caging uncertainty: Responsible reform of federal child pornography sentencing guidelines. *Northern Kentucky Law Review*, 42 (1), 65-88. pages. 78-79

⁸³ Tobin, J. (2019), *supra* nota 59, pages 1316-1321

⁸⁴ United Nations, 11. *Convention on the Rights of the Child*, New York: 20 November 1989, *supra* nota 19, Article 34

⁸⁵ Tobin, J. (2019), *supra* nota 59, pages 1329-1332

⁸⁶ Muntarhorn, V. (2007). A commentary on the united nations convention on the rights of the child, Article 34: sexual exploitation and sexual abuse of children. [A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans & M. Verheyde, Eds.] [Vol. 34]. Leiden: Martinus Nijhoff Publishers. BRILL. ProQuest Ebook Central, Accessible: <https://ebookcentral.proquest.com/lib/tuee/detail.action?docID=468284> pages. 36-40. 5 March 2021

⁸⁷ Cismas, I. (2014). *Religious actors and international law*. OUP Oxford United Kingdom. page. 233.

⁸⁸ UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011), *supra* nota 71, paragraphs 41 (d.), 4

extends to legislative measures of criminalization and prohibition of accessing and viewing of child pornography. This is consistent with Committees guidance regarding Article 34. As, it requires adherence to outcome documents of “World Congresses against sexual exploitation of children.”⁸⁹ Which call for “criminalization of sexual exploitation and abuse of minors”.⁹⁰

It can be expressed that due to viewing and accessing not being explicitly included they are excluded. Nevertheless, wording of instruments establishes coverage. To begin, Article 3 (1) (c) of OPSC via wide interpretation of “possession” encompassing viewing and accessing due to link to Article 34 CRC and ordinary meaning of “possession” being determined by intention of the OPSC making narrow reading unreasonable. Finally, Article 34 by obligating parties to “take all appropriate measures to prevent”, including criminalization of abuse and exploitation. Accessing and viewing being forms of abuse and exploitation. As such, perceived through depicted framework CRC and OPSC include and criminalize viewing and accessing. Thus, Japan, is required to take action to criminalize these conducts.

⁸⁹ Muntarhorn, V. et al. (2007), supra nota 86, pages 7-11

⁹⁰ World Congress III. (2008). The Rio de Janeiro Declaration and Call for Action to prevent and Stop sexual Exploitation of Children and Adolescents. paragraphs. 4, 28. Accessible: https://www.ecpat.org/wp-content/uploads/2016/04/WCIII_Outcome_Document_Final.pdf (the 2nd footnote), 12 January 2021 and UN High Commissioner for Refugees (UNHCR), Yokohama Global Commitment 2001, 20 December 2001, accessible: <https://www.refworld.org/docid/3f9fe2bd4.html> [accessed 12 January 2021]

2.2. Questionable area of Chakuero

It is of interest to expound on “chakuero” before examining whether it conflicts with international treaties. Chakuero is sold extensively in Japan and regarded legal. Chakuero (“clothed ero”, underage individuals in minimal attire) material does not necessarily involve coition or sexually obvious contact. Albeit, individual is in pose characterized as focusing on intimate areas. Furthermore, many are advertised as elementary students (6-12 year-olds).⁹¹ The material is comparable to “child erotica.”⁹² Consisting of utilizable mediums for sexually exploiting minors, not necessarily fulfilling child pornography’s legal requirements. Material is problematic since, while erotica may seem artistic, alleged purpose of “child erotica” is evoking sexual feelings. Child erotica may allude towards criminal conduct for its connection with abuse -and pornography. As, collections containing child pornography commonly conjoin with child erotica.⁹³ Japan’s strict definition of poses classifying as child pornography may create unclarity. Due to definitions constraint to specified exposure with limited poses. Inhibiting definition of child pornography, failing to subsume material that lacks complete nudity of minors that exhibit sexual organs. Seemingly this is the general consensus within Japan. As, material in (iii.) category is not recognized as illegal.⁹⁴ Still, chakuero could fall under obscene material in Article 175 of the Penal Code criminalizing “distribution, possession or public display of an obscene document, drawing or object.”⁹⁵ However, this does not seem the case. Obscenity will be discussed in section 3.3. Succinctly, display of genitalia is assessed by judges, determining on obscenity. Therefore, material under (iii.) category is not necessarily judged obscene.⁹⁶ However, does child erotica fall under child pornography according international treaties? Article 34 of the CRC could include child erotica within pornography. As, it obligates parties to safeguard minors from “all forms of

⁹¹ HumanRightsNow. (2018), *supra* nota 2, pages 4-6, 20

⁹² Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016), *supra* nota 48, page 5

⁹³ Leary, M. G. (2009). Death to child erotica: How mislabeling the evidence can risk inaccuracy in the courtroom. *Cardozo Journal of Law Gender*, 16 (1), 1-40. pages 1-2, 7-8

⁹⁴ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016), *supra* nota 48, paragraph 13 and HumanRightsNow. (2018), *supra* nota 2, page 6

⁹⁵ Takeuchi, C. (2015), *supra* nota 15, page 213

⁹⁶ HumanRightsNow. (2018), *supra* nota 2, page 14

sexual exploitation -and abuse.” Requiring prevention of: “child exploitation in pornographic performances and materials.”⁹⁷ Wording “all forms of...exploitation and abuse” suggest coverage of child erotica. However, CRC lacks definition of sexual exploitation -and abuse. Nevertheless, generally sexual abuse includes coercion into sexual activity or insufficient consent due to developmental stage. Sexual activity is understood to include distinct and ambiguous sexual behaviour⁹⁸, psychological abuse, encompassing child erotica, being included within the definition.⁹⁹ Therefore, chakuero seems to constitute sexual activity in its ordinary meaning and sexual activity requirement of sexual abuse is fulfilled. Additionally, if minors participate in chakuero the coercive element is fulfilled resulting from lack of consent due to age. Thus, chakuero constitutes as sexual activity that is sexual abuse.

Sexual exploitation, entails interchange amongst parties.¹⁰⁰ Additionally, it is an act misusing authority to achieve sexual intents.¹⁰¹ Constituting sexual exploitation if it contains gain and leads to sexual intents. In chakuero, monetary exploitation is present. As, individuals in the material receive compensation and the creator profits. Making activity gainful and commercial. Confirmed by The Committee and Special Rapporteur, who associate “chakuero as leading to sexual exploitation.”¹⁰² As, minors are displayed sexually suggestively in materials sold in the adult industry.¹⁰³ Sexual element in exploitation is often present with chakuero. Affirmed by an investigative report of Human Rights Now establishing significant portion of chakuero exceeding to sexual abuse.¹⁰⁴ Thus, arguably chakuero constitutes sexual exploitation. Due to the exchange element and containment of sexual intent.

However, whether it constitutes child pornography is questionable. As, child erotica and pornography have different legal status.¹⁰⁵ “Pornographic performance or material” is absent of definition.¹⁰⁶ Still, “pornography” interpreted through system of coherence requires that definition

⁹⁷ United Nations, 11. Convention on the Rights of the Child, New York: 20 November 1989, supra nota 19, Article 34 (c)

⁹⁸ Tobin, J. (2019), supra nota 59, pages 1316-1317, 1320

⁹⁹ Greijer, S. and Doek, J. (2016), supra nota 59, pages 19, 38

¹⁰⁰ Tobin, J. (2019), supra nota 59, page 1314

¹⁰¹ Greijer, S. and Doek, J. (2016), supra nota 59, page 25

¹⁰² United Nations Convention on the Rights of the Child, Committee on the Rights of child, Concluding observations on the combined fourth and fifth periodic reports of Japan, (2019), supra nota 48, paragraph 46 (b)

¹⁰³ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016), supra nota 48, paragraphs 13, 19, 60, 74 (iv)

¹⁰⁴ HumanRightsNow. (2018), supra nota 2, pages 19-29

¹⁰⁵ Leary, M. G. (2009), supra nota 93, pages 3-4

¹⁰⁶ Tobin, J. (2019), supra nota 59, page 1325

of pornography in the CRC adheres to the OPSC.¹⁰⁷ According to the OPSC, Article 2, depictions of “sexually explicit conduct or activity” or minors sexual organs constitute “child pornography.”¹⁰⁸ However, such definition discards indistinct sexual activities. Still, according to this interpretation child erotica is not covered by child pornography in the OPSC. This legal void has been recognized, lacking further addressal.¹⁰⁹ Thus, chakuero does not seem to constitute child pornography.

Still, Article 34 is expansive covering “all forms” of exploitation and abuse. Chakuero could fall under (a) “inducement or coercion of minor to engage in any unlawful sexual activity.”¹¹⁰ Understanding regarding wording sexual activity is not afforded by Committee or in travaux préparatoires. However, chakuero constitutes sexual activity understood in ordinary meaning. Still, Article 34 (a) covers “unlawful activity” meaning of which is divulged in travaux préparatoires: to exclude possibly lawful activity. Such as, lack of inducement or coercion. Explanation concerning what “coercion” or “inducement” signify is negligible. However, in ordinary meaning inducement entails dominance over individual’s actions through monetary or emotional incentive. Coercion, involves compulsion or absent consent due to minority of age.¹¹¹ Both are present in chakuero. Hence, it cannot be considered excludable lawful activity. Fulfilling definition of sexual abuse falling under Article 34 (a) of the CRC.

As explained, in section 2.1, Article 34 requires Parties to “take all appropriate measures to prevent persuasion or coercion of minors to unlawful activity including abuse and exploitation.” Ordinary meaning of “take all appropriate measures to prevent” is understood through Article 19, linked with Article 34. Obligation to prevent is wide, extending to criminalization.¹¹² Therefore, Japan must prevent sexual exploitation and abuse in chakuero, criminalizing it to avert human right violations.

¹⁰⁷ Ibid., pages 1325-1326

¹⁰⁸ Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography. (2002), supra nota 37, Article 2 (c)

¹⁰⁹ Greijer, S. and Doek, J. (2016), supra nota 59, page 38

¹¹⁰ United Nations, 11. Convention on the Rights of the Child, New York: 20 November 1989, supra nota 19, Article 34 (a)

¹¹¹ Tobin, J. (2019), supra nota 59, pages 1316-1321

¹¹² Cismas, I. (2014), supra nota 87, page 223 and UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011), supra nota 71, paragraphs 41 (d), 4.

3. Legislative limitations; excluding pictorial child pornography

Broadly inspecting Japan's history regarding manga ("funny pictures"¹¹³) is beyond breadth of the thesis. However, brief explanation is necessary to contextualize "lolicon" and "shotacon". From 1770s, word manga originates. Only in 1930s did it acquire utilization in popular culture of Japan. Among primary splits, amidst divisions, between market branches is divide amidst female and male readers.¹¹⁴ As, manga entails multiple genres accumulating extensive reader base. Its success regarding the spread of material is due; diverting individuals from pressures of the culture and provision of visual pleasure. A part of manga is intercourse and aggression generating praise and critique. Critique according which graphic sexual abuse has amplified.¹¹⁵ Mostly criticism comes from the West, 2018 ECPAT report, categorizing loli- and shotacon "highly sexually exploitative."¹¹⁶ Albeit, materials containing explicit sexual depictions are designated "adult", the adult industry in Japan is considerable. Sexually explicit manga portraying minors has sizeable markets, retaining same prevalence as remaining pornography categories.¹¹⁷ Lolicon and shotacon remain in demand amid younger age demographics.¹¹⁸ Lolicon is a subgenre of sexually explicit manga. Depicting lascivious drawings of female minors in sexually aggressive circumstances.¹¹⁹ The term encompasses attachment of manga to sexual monomania fixating on "shojo" (young girl) fantasy, dating from 1980s.¹²⁰ "Shotacon" (young boys) is "yaoi's" (boys love) subgenre which consists explicit fictive pornography, depicting minors with adults.¹²¹ As, stated in section 2. Japan does not include in definition of child pornography manga. Confirmed by Japan's reservations regarding Convention on Cybercrime Article 9 2c.¹²² Encompassing, in child pornography, non-existent minors.¹²³ Additionally, though there is censorial legislation, depictions

¹¹³ Sugimoto, Y. (2014). *An introduction to Japanese society*, 4th ed. Cambridge University Press. page. 264

¹¹⁴ Sugimoto, Y. (2009), *supra nota* 4, pages 240-246

¹¹⁵ Sugimoto, Y. (2014), *supra nota* 113, pages 264-266

¹¹⁶ Ryu, K. and Varella, A. (2018), *supra nota* 3, page 10

¹¹⁷ April, K. (2012). Cartoons aren't real people, too: Does the regulation of virtual child pornography violate the first amendment and criminalize subversive thought. *Cardozo Journal of Law Gender*, 19 (1), 241-272. pages. 265-266.

¹¹⁸ Ryu, K. and Varella, A. (2018), *supra nota* 3, page 10

¹¹⁹ Kalim, A. (2013). Addressing the gap in international instruments governing internet child pornography. *CommLaw Conspectus: Journal of Communications Law and Policy*, 21 (2), 428-452. pages 446-447

¹²⁰ Takeuchi, C. (2015), *supra nota* 15, pages 201-206

¹²¹ McLelland, M. (2005). *The World of Yaoi: The Internet, Censorship and the Global Boys Love Fandom*. *Australian Feminist Law Journal*, 23, 61-78. pages. 67-69

¹²² Reservations and Declarations for Treaty No. 185- Convention on Cybercrime, (2020). Accessible: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/declarations>, 23 February 2021

¹²³ ETS No. 185, (2001). *Convention on Cybercrime, Explanatory report*, Budapest. Accessible: https://www.oas.org/juridico/english/cyb_pry_explanatory.pdf page. 21, 15 January 2021, paragraph. 101.

of sexual acts are enabled by restricting “obscenity” as explicit depictions of sexual organs. Hence, manga, provided sexual organs are not detailed, can portray sexual conduct.¹²⁴

3.1. International legal obligations regarding definition of child pornography

However, do international treaties criminalize pictorial child pornography? Inclusion of pictorial child pornography in Article 34 CRC is questioned. Since, there is no regulation of what “(c) exploitative use of minors in pornographic performances and materials” covers. Term “use of children” could refer to existing children.¹²⁵ Nevertheless, according system of coherence CRC must comply with delineation of the OPSC.¹²⁶ Providing clear interpretation. “Child pornography means any representation, by whatever means, of a minor engaged in real or simulated explicit sexual activities..”¹²⁷ Therefore, despite unclarity of Article 34 of CRC, wide wording of the OPSC Article 2 (c) covers pictorial child pornography. As, indications regarding “any representation, by whatever means of a minor,” and “ real or simulated..” divulge encompassment of various child pornography forms.¹²⁸ Concerning “real or simulated” definition covers non-existent children. As, wide interpretation is affirmed from travaux préparatoires. Reflecting in definitive wording of the Article, not only concerning existing minors, due to inclusion of term simulated. Regarding “any representation, by whatever means” drafting history of the OPSC divulges that restricted reading of child pornography is unjustifiable. As, purpose of the OPSC is protection of minors the definition should be extensive. Hence, “any representation” requires interpretation according its ordinary meaning understood through aim of the OPSC which is wide, extending to drawings and virtual child pornography.¹²⁹ Supported by Luxembourg Guidelines, guidelines for consensus on terms, according which “any representation, by whatever means” encompasses, a non-exhaustive list, varying pornographic mediums. Including illustrations and “virtual child pornography.”¹³⁰ The Committee confirmed this by reiterating the wording in Guidelines regarding implementation

¹²⁴ McLelland, M. (2005), supra nota 121, pages 67-68

¹²⁵ Legislative History of the convention on the rights of the child. Volume II (2007). United Nations, New York and Geneva. pages. 713-723 Accessible: <https://www.ohchr.org/Documents/Publications/LegislativeHistorycrc2en.pdf> 7 September 2020

¹²⁶ Tobin, J. (2019), supra nota 59, pages 1325-1326

¹²⁷ Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography. (2002), supra nota 37, Article 2 (c)

¹²⁸ Takeuchi, C. (2015), supra nota 15, page 224

¹²⁹ Tobin, J. (2019), supra nota 59, pages 1735-1736

¹³⁰ Greijer, S. and Doek, J. (2016), supra nota 59, page 36

of OPSC. Mentioning non-existent children in context with fundamental right to dignity¹³¹, which conflicts with exhibition of any minors as “sexual objects”.¹³² This human right reflects in “international standards and norms,” based on which child pornography comprises presenting minors, in any form, in a pornographic manner.¹³³

Obligation for criminalizing acts relating to child pornography is in Article 2 (c) of the OPSC. Hence, Japan must criminalize virtual and pictorial manga for they constitute child pornography.¹³⁴ Since, due wide definition of child pornography shota- and lolicon are included within it. As, they present images “simulating sexual activities and displaying sexual parts of children.”¹³⁵ Therefore, narrow definition of “child” expressed in Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of children referring to only real children does not adhere to definition in the OPSC.

3.2. Freedom of expression: limitation on child pornography

As, pictorial child pornography does not depict actual children freedom of expression could protect it. As, apprehension regarding consequences, and uncertainty regarding materials harm to children, for limiting freedom of expression pertained to omitting non-existent minors from ambit of child pornography.¹³⁶ Quarantee of freedom of expression is under Consitution of Japan Article 21. Ensuring all forms of expression. Article 21.2 forbids censorship.¹³⁷ Concept of inviolability of fundamental rights is under Article 97, which Supreme Court deemed foundation of democracy. Reflecting importance of freedom of expression. Additionally, pre-publication censorship is disallowed within the article.¹³⁸ However, freedom of expression is not an absolute right. Concept of “public welfare” is a counterforce for restricting human rights.¹³⁹ Therefore, regulating pictorial child pornoraphy could be possible through public welfare. Public welfare is expressed in the

¹³¹ UN Convention on the rights of the child. (2019). Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. CRC/C/156 paragraph 63. Accessible: https://www.ohchr.org/Documents/HRBodies/CRC/CRC.C.156_OPSC%20Guidelines.pdf ,15 January 2021

¹³² Greijer, S. and Doek, J. Interagency working group, ECPAT. (2019), supra nota 53, page 68

¹³³ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016), supra nota 48, paragraph 24

¹³⁴ Takeuchi, C. (2015), supra nota 15, page 224

¹³⁵ Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography. (2002), supra nota 37, Article 2 (c)

¹³⁶ Takeuchi, C. (2015), supra nota 15, page 211

¹³⁷ Oda. H. (2009), supra nota 7, page 91

¹³⁸ Ibid., pages 90-94

¹³⁹ Beer, L. W. (1990). Freedom of expression: The continuing revolution. Law & Contemp. Probs., 53(2), 39-70. page. 42.

Constitution Articles 12 and 13. Article 12 guarantees citizens freedoms and rights also giving responsibility not to misuse rights. Article 13 provides that rights to freedom, life and happiness are prioritized provided public welfare is not disturbed.¹⁴⁰ Essentially, public welfare is regarded “supreme consideration” of state.¹⁴¹ However, it lacks a definition in the Constitution and is a polarizing concept.¹⁴² Noted by the Committee on Human Rights in their query on “restrictions of constitutional provisions based on public welfare”. Clarification by Japans’ delegate confirmed equivalence between concepts of health, public safety, order, morals and public welfare.¹⁴³ Stating that definition of public welfare is in court’s precedents.¹⁴⁴ Necessitating examination of Supreme Court cases to define public welfare and whether it can restrict freedom of expression regarding loli- and shotacon.

3.3. Japanese obscenity laws: defining public welfare

Examination of Supreme Court decisions to determine “public welfare” through obscenity cases is necessary. As established, though coherence is respected, regarding judgements, following precedents is not requisite. Articles 12 and 13 of the Constitution are adopted by the Supreme Court for prohibition of obscene materials. Two obscenity cases determined conduct for obscenity judgements in Japan. The earlier, 1957 case regarding D.H. Lawrences story *Lady Chatterly’s Lover* (*Chatterly*). Subsequent, 1969, rendition of Marquis de Sade’s fiction (*de Sade case*). These guidelines received clarification in 1980 by the *Yojohan* case. A three-pronged test was deployed, in *Chatterley*, to determine parameters of community standards for obscenity. Conditions of the parameters consisting; “(1) work causes arousal, (2) offends sense of shame and (3) contradicts appropriate concepts of sexual morality.” Determination of obscenity was done by Court and the standard of determination “prevailing ideas of society.” “Prevailing social ideas” regarding sex were acknowledged as time-based. Still, insurmountable boundaries exist, one being “nonpublic nature of sexual acts.” The court delineated that paralleling of obscenity and artistic expression is viable. Nonetheless, obscenity would not dissolve by merit of art. The Court established that in public welfare priority is preservation of “a minimum sexual morality.” Since, *Chatterley* caused

¹⁴⁰ Oda, H. (2009), *supra* nota 7, page 91

¹⁴¹ Beer, L. W. (1968). The public welfare standard and freedom of expression in japan. *Wash. L. Rev. & St. B. J.*, 43(5), 1095-1128. page 1097

¹⁴² Beer, L. W. (1990), *supra* nota 139, page 42

¹⁴³ Good, M. H. (1985), *supra* nota 12, page. 442.

¹⁴⁴ Ministry of foreign affair of japan. (2014). Fourth periodic report by the government of japan under article 40 paragraph 1 (b) of the International Covenant on Civil and Political Rights. Accessible: https://www.mofa.go.jp/policy/human/civil_rep4/general.html#gl , 22 January 2021

arousal, compromising “minimum sexual morality” in public, violating sexual relationships’ private disposition, restriction of fundamental rights was justified.¹⁴⁵

The de Sade decision supported ability of obscenity and artistic value to parallel, deciding that obscenity may be invalidated by artistic merit. Delineating obscenity according “prevailing ideas of community...” Which judges evaluate from works collectively to determine obscene character, according their perception of social ideals.¹⁴⁶

Finally, Yojoan established precise obscenity standards. Judging that determining factor in obscenity cases “is primary attraction of the work obscene interest?” To answer, five criteria were established: (1) manner of representation of sexual features and conduct; (2) segment of sexual material compared to overall content; (3) amount of sophisticated portion contrasted to sexual content; (4) amount by which artistic or sophisticated portion of a work alleviates sexual arousal; and (5) how integral depiction of sexual content is to material.¹⁴⁷

What can be inferred from these cases? Firstly, regarding obscenity presumably “prevailing ideas of society” are determinant of obscenity and what offends the public welfare. Secondly, social ideas are temporal. Resulting in their vagueness and subjectivity, defined by the Court. Finally, to determine whether a work is against public welfare an evaluation, if content of the work decreases obscenity in sections, must be made. Regarding public welfare, perception of sexually direct materials, in public, by Courts creates an impression of being construed as “adverse to ordinary sense of sexual modesty.” It seems that although individual rights are relevant, only concerning needs of the community. Basis of public welfare suggests that peace in community precedes pursuit of individual rights, justifying restriction of freedom of expression.¹⁴⁸

However, to not restrict freedom of expression by public welfare, differentiation must be made between unlawful images of existing minors from pictorial characters. Since, for freedom of expression to prevail non-existence of abuse of existing minors is required.¹⁴⁹ Nevertheless, 2007 Supreme Court case, *Misshitsu* concerning manga, determined that “potentially harmful” works

¹⁴⁵ Crandall, D. (1992). Obscenity Doctrines of Japan and the United States Compared. *ILSA J of Intl L*, 15, 1-32. page 1-10.

¹⁴⁶ *Ibid.*, page 10-14

¹⁴⁷ *Ibid.*, page 14-16

¹⁴⁸ Trager, R.; Obata, Y. (2004). Obscenity decisions in the Japanese and united states supreme courts: Cultural values in interpreting free speech. *U.C. Davis Journal of International Law Policy*, 10 (2), 247-276. pages 273-274

¹⁴⁹ Khan, K. (2000). Child pornography on the internet. *Police Journal*, 73 (1), 7-17. pages. 14-15

may be obscene. The court referenced Cybercrime Convention and international standards as basis to limiting access to potentially harmful images regardless whether they are real. Based on nature of manga, combining pictures and text, intensifying sexual desire affecting readers. Hence, Court justified extending obscenity to works potentially harmful to society.¹⁵⁰ Research indicates pictorial child pornography may be harmful and there are suggestions of utilization for grooming.¹⁵¹ Allegedly, sustaining interest for child sexual abuse, inciting objetification of minors.¹⁵² Indications by savants present that cultural acceptance of objetification of minors and virtual child pornography harms children. Therefore, the 2014 Amendment can be limited under public welfare sine, protection of “cultural and artistic activities” covering loli- and shotacon is potentially harmful and does not appear to favourably socially impact Japan.¹⁵³ Additionally, sustaining defense of loli-and shotacon conflicts with Japan’s legislative commitments. Since, Japan’s constitution requires, Article 98 paragraph 2, adherence to international treaties¹⁵⁴, of which OPSC calls for criminalization of material, and the 2014 Amendment, Article 1, reveals its aim as protection of children, accounting for international direction regarding the protection.¹⁵⁵ Which necessitates forbiddance of the material. Thus, one way for Japan to honour commitments is to repeal legislation and criminalize pictorial child pornography.

¹⁵⁰ Takeuchi, C. (2015), *supra* nota 15, pages 215-217

¹⁵¹ Gillespie, A. A. (2011). *Child pornography law and policy*, Routledge, USA and Canada by Routledge 7 II Third Avenue, New York. pages. 108-109.

¹⁵² Greijer, S. and Doek, J. (2016), *supra* nota 59, page 41

¹⁵³ Takeuchi, C. (2015), *supra* nota 15, pages 229- 230

¹⁵⁴ Oda. H. (2009), *supra* nota 7, pages 41-42

¹⁵⁵ Act on Regulation and Punishment of Acts relating to child prostitution and child pornography, and the protection of children. Act No 52 of May 26, 1999, *supra* nota 41, Article 1

4. Enhancing Japan's compliance with international treaties

4.1. Proposal for compliance

As demonstrated Japan is not complying with international obligations, leaving its legislation in conflict with them. As, there are no exceptions for ignoring obligations, Japan must adhere to treaties. For such to occur, key changes must be made to the 2014 Amendment regarding chakuero, viewing and accessing child pornography and pictorial child pornography. Discussed below.

As, stated in section 2, Japan's definition of child pornography is restricted to degrees of nudity and criminalized poses. This inflexible categorization excludes chakuero. However, in comparison, law in the United Kingdom may provide a draft for criminalizing chakuero. Japan could adhere to obligations regarding chakuero by amending the 2014 amendment, explicitly criminalizing material. Common law is the foundation for United Kingdom's legislation. Thus, Courts create legislation via decisions by setting legal precedents.¹⁵⁶ Though, law in Japan is statutory, regard is given to judicial decisions as a legal source.¹⁵⁷ Thus, UK's legislation could serve an example.

Legislation ordaining offences regarding indecent images depicting minors, In the United Kingdom, are Criminal Justice Act 1988 and the Protection of Children Act 1978. Interpretation of minor in Protection of Children Act is an individual not yet 18. Criminalized acts constitute of: taking, distributing or possessing indecent photographs or pseudo-photographs displaying minors for dissemination.¹⁵⁸ "Indecent" lacks definition, however courts interpret it according "recognised

¹⁵⁶ Corbin, A. L. (1912). What is the common law. *American Law School Review*, 3(2), 73-75. pages 74-75

¹⁵⁷ Oda. H. (2009), *supra nota* 7, page 42

¹⁵⁸ Sweeney, J. (2012). Sexting and freedom of expression: comparative approach. *Kentucky Law Journal*, 102(1) 103-146. page 127-128

standards of propriety”¹⁵⁹ that are temporal and objective.¹⁶⁰ In consideration regarding indecency, relevant factor is “reasonable person’s” view on indecency of image¹⁶¹, whereas maker’s intent and circumstances that encompasses photographing are discarded from deliberation.¹⁶² Albeit, indecency is not defined, court’s precedents formulate classifications for determination. Essentially, erotic posing and images fitting chakuero are lightest category of indecent, with light penalties. Whereas, bestiality, penetrative acts or sadism belong to a rigorous category, bearing strictest penalties.¹⁶³ Due to definition of light category being wide and discounting intent and context, innocuous photographs could fall within it.¹⁶⁴ However, heeding Lord Woolf, it is inconceivable that such photographs would face prosecution.¹⁶⁵ Still, it may be questionable to discount motive behind taking images. As, some suggest consideration regarding legality of image would be predicated on morality in lieu of harm.¹⁶⁶ However, albeit consideration of context and intent in taking the photograph is excluded, court must examine intent of existing image’s possessors or viewers.¹⁶⁷ Additionally, test of indicency is of objective perception. The above indicates that legality of image is based on caused harm. Japan limiting child pornography to specific poses induces ambivalence in legislation, leading to omitting material from child pornography. Whereas, indecent inclusively covers chakuero, expressing content’s criminalization. Widening the definition of child pornography. Which avoids omission of cases ascribed to rigid definition. Providing viable template for amending legislation.

In addition to legislation, diverse strategy is needed to extirpate chakuero, containing assistance from police, private sector and public actors. For example. pornography industry could establish public homogeneous evaluation requirements for materials. Additionally, review associations could affirm ages of “performers”, establishing systems for detection of illegal material incorporating reportation to law enforcement. Regarding websites hosting pornography,

¹⁵⁹ Antoniou, A. (2013). Possession of prohibited images of children: Three years on. *Journal of Criminal Law*, 77(4), 337-354. pages 337-339

¹⁶⁰ Court of Appeal (Criminal Division), *R. v Stamford (John David)* [1972] 2 Q. B 391, [1972] 2 W.L.R. 1055, 29 February 1972. pages 1-2

¹⁶¹ Sweeny, J. (2012), *supra* nota 157, page 144

¹⁶² Gillespie, A. A. (2010). Defining child pornography: Challenges for the law. *Child and Family Law Quarterly*, 22(2), 200-222. page 211

¹⁶³ Gillespie, A. A. (2010). Sentences for offences relating to indecent photographs. *Journal of Criminal Law*, 74(6), 510-515. pages 511-512

¹⁶⁴ Gillespie, A. A. (2010), *supra* nota 161, page 211

¹⁶⁵ Antoniou, A. (2013), *supra* nota 158, page 338-339

¹⁶⁶ Akdeniz, Y. (1996). Computer pornography: comparative study of the us and uk obscenity laws and child pornography laws in relation to the internet. *International Review of Law, Computers & Technology*, 10(2), 235-262. pages 247-248

¹⁶⁷ Sweeny, J. (2012), *supra* nota 157, page 144

verification of ‘performers’ identity could become mandatory and means proposed, other solutions, regarding viewing and accessing child pornography are utilizable for chakuero.¹⁶⁸

Japan does not define nor criminalize accessing and viewing of child pornography, hence it may benefit from example of the United Kingdom. In which accessing and viewing child pornography is regulated in Protection of Children Act 1978, Section 1, encompassed in terms “to take, to make”, interpreted as “producing or conducting into existence.” Clarified to contain for example. accessing emails and websites entailing indecent pictures and pop-ups of children.¹⁶⁹ The accessor must purposefully perceive material, with awareness or suspicion of pictures indecency.¹⁷⁰ Comprehensive definition of “producing” that subsumes accessing and viewing is used and legislation establishes criminalization regarding actions of mens rea. Since, the legislation is drafted with distinct terms of containment and delimitations, it would equip Japan a model.

Other solutions for blocking accessing and viewing of child pornography focus on the internet. Due, prominence of material. “Blocking orders”, preventing ISPs (Internet Service Providers) from allowing access to websites hosting illegal content, could prevent access. However, adherence to fundamental rights must be guaranteed despite blocking systems. According to Bambauer functional “blocking system” must be: clear regarding rationale and criteria, limited regarding blocked content, transparent regarding influence citizens have on censorship and redressable regarding incorrect blocking.¹⁷¹ Along with legislation, investigations by law enforcement, from national and international level, could be used to catch accessors of sexual exploitation.¹⁷² Lastly, instruments which forage World Wide Web registering data to evidence bases recognizing sexual violations, could be utilized.¹⁷³ Above mentioned alongside legislation are essential for comprehensive approaches to cessate mentioned conducts.

¹⁶⁸ HumanRightsNow. (2018), supra nota 2, pages 7-9

¹⁶⁹ Court of Appeal (Criminal Division), No. 2001/00251/YI 2001/06320/Z3, [2002] EWCA Crim 683, 2002 WL 237226, 7 March 2002, R v Smith 1 Cr. App. R. 13, paragraphs 1-3. and Court of Appeal (Criminal Division), No: 200606031/D3, R v Harrison, 5 December 2007, 1 Cr. App. R. 29. paragraphs 1-3 and 18-20.

¹⁷⁰ Divisional Court, Atkins v DPP [2000] 1 W.L.R. 1427, [2000] 3 WLUK 213,8 Marcg 2000, page 1428.

¹⁷¹ McIntyre, T. T. (2010). Blocking child pornography on the internet: European union developments. International Review of Law, Computers & Technology, 24 (3), 209-222. pages 211-214

¹⁷² Europol, Press Release 18 April 2017, ‘Global action tackles distribution of child sexual exploitation images via WhatsApp: 39 arrested so far, Accessible: <https://www.europol.europa.eu/newsroom/news/global-action-tackles-distribution-of-child-sexual-exploitation-images-whatsapp-39-arrested-so-far> accessed 4 February 2021

¹⁷³ Brown, J. (Ed.). (2017). Online risk to children: Impact, protection and prevention. ProQuest Ebook Central, Accessible: <https://ebookcentral.proquest.com> page 163, 19 March 2021

4.2. Proposal for a framework on ban of pictorial child pornography

Fictional children are accounted under child pornography in the United Kingdom. Outlawed in Coroners and Justice Act 2009 pertaining to pornographic depictions, drawn or produced utilizing computer-graphics. Pornographic depiction is an image created for sexual stimulation. Moreover, content must draw attention to pubic region, be derogatory or an action defined in the Act. Namely, acts in presence or with an adult including; coition, self-gratification, oral or penetrative acts or bestiality.¹⁷⁴ Image fulfills criteria of a child if prevailing perception is a person below 18. The minor may be fictitious and not every feature must correspond with a child's.¹⁷⁵ Japan excludes from child pornography fictional children. By interpreting images as not causing harm. However, Misshitsu brought acceptance of potential harm limiting freedom of expression, including pictorial child pornography. Additionally, Japan ratified the OPSC criminalizing the material. Conversely, United Kingdom perceives pictorial child pornography as a viable tool to harm minors, through "grooming", justifying criminalization. Concerns on definition suppressing freedom of expression have been raised. However, at international level approach is forbiddance of pictorial child pornography. Justified through conviction that material is applicable for grooming. For, allegedly material's normalization incites sexual crimes towards minors.¹⁷⁶ Thus, for Japan to conform to obligations and international opinion it could model legislation after the United Kingdom.

Alternative for banning pictorial child pornography is, as Takeuchi suggested, prosecution of loli and shotacon as "obscene". For, obscenity decisions set standard of obscenity with criteria for assessment of restricting freedom of expression. Furthermore, Misshitsu serves as framework. For, citing international standards as reason for monitoring material, judging it susceptible to obscenity.¹⁷⁷ However, its effectiveness is questionable. As, incongruity amid statutory legislation and accepted practices endure. Since, often "tatemae" ("appearance") conflicts with "honno" ("true opinions"). Exemplified in tatemae of obscenity rules being strict, covering loli- and shotacon. Yet, material remains popular and prosecution absent, divulging honno.¹⁷⁸

¹⁷⁴ Nair, A. (2010). Real porn and pseudo porn: The regulatory road. *International Review of Law, Computers & Technology*, 24(3), 223-232. pages 226-227

¹⁷⁵ Antoniou, A. (2013), *supra nota* 158, page 343

¹⁷⁶ Akdeniz, Y., & Akdeniz, D. Y. (2008). Internet child pornography and the law: National and international responses. ProQuest Ebook Central, Accessible: <https://ebookcentral.proquest.com/lib/tuee/detail.action?docID=438524>. page 11, 22 March 2021

¹⁷⁷ Takeuchi, C. (2015), *supra nota* 15, page 235

¹⁷⁸ Crandall, D. (1992), *supra nota* 145, pages 24-26

CONCLUSION

To conclude, aim set out to be achieved by the thesis was investigation regarding Japan's compliance concerning child pornography's prohibition and definition with its international legal obligations. Additionally, in case of non-compliance, exploration and provision of possible adherence methods regarding ratified treaties. Albeit, Japan has strived to progress regarding legislation on protection of children there are still domains where it is inconsistent with international treaties, the United Nations Convention on the Rights of the Child, the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and Council of Europe Convention on Cybercrime, it ratified. It is apparent from the research that since amongst Japan's uppermost legal "sources" are international treaty obligations, preempting discordant domestic laws, compliance to obligations is required.¹⁷⁹ Nevertheless, requisites formulated by Japanese Courts may cause evasion of conforming to international treaty obligations by adjudging matters "highly political" bypassing them, judging a treaty non self-executing, adherence to international treaties being found as conflicting with public welfare of the country and declaring treaty commitments as indefinite, thus neglecting obligations.¹⁸⁰ However, none of the exceptions are applicable, regarding subject of child pornography, for overlooking ratified treaties.

The first area of conflict regarding Japan's treaty obligations concerns non-criminalization of volitional accessing and viewing of child pornography.¹⁸¹ Such conduct is criminalized in the CRC and OPSC. As, "possession", criminalized in OPSC Article 3 (1), of child pornography, by virtue of broad meaning subsumes viewing and accessing of such material. Resulting from ascertainment of a terms conventionally given purport from objective of OPSC, provision of perpetual safeguard for children, and CRC Article 34's connection with the Article.¹⁸² Additionally, criminalization is required by demand expressed in Article 34 of the CRC to "take all appropriate measures to prevent

¹⁷⁹ Oda. H. (2009), *supra* nota 7, page 42

¹⁸⁰ Ishibashi, K. (2015), *supra* nota 32, pages 141-153

¹⁸¹ Act on Regulation and Punishment of Acts relating to child prostitution and child pornography, and the protection of children. Act No 52 of May 26, 1999, *supra* nota 41, Articles 1-3

¹⁸² Vandenhoe, W., Erdem Turkelli, G., and Lembrechts, S. (2019), *supra* nota 58, pages 129-135 and Vienna Convention on the Law of Treaties, (1969-1973), *supra* nota 28, Article 31 paragraph 1

child abuse and exploitation.” As, “abuse and exploitation” incorporate viewing and accessing, criminalization for acts is obliged.¹⁸³ Second area of conflict concerns “chakuero”, equatable with child erotica.¹⁸⁴ Material viewed legitimate, attributable to legislations concise scope of child pornography, inhibiting it to narrow definition of nudity and appointed postures.¹⁸⁵ Such categorization makes coverage of child pornography nebulous for citizens, factoring out chakuero from child pornography’s sphere. Providing issues. As, chakuero comprises sexual activity amounting to sexual abuse according to Article 34 of the CRC¹⁸⁶ and plausibly sexual exploitation, due to often escalating to sexual misconduct and entailing a commercial element.¹⁸⁷ Additionally, chakuero amounts to, Article 34 (a) of the CRC, “inducement or coercion of a minor to engage in any unlawful activity.” As, it includes malfeasant actions as “coercion and inducement.”¹⁸⁸ Therefore, due Article 34’s stipulation of “taking all appropriate measures to prevent abuse and exploitation,” criminalization is demanded in the CRC. Since, “taking appropriate measures,” contains Article 34 coupled to Article 19 of the CRC, requiring as a measure criminalization of “all abusive conduct.”¹⁸⁹ The final found conflict area concerns manga of loli -and shotacon variety representing pictorial child pornography. Pictorial child pornography enclosed in OPSC Article 2 (c), criminalizing the conduct. ¹⁹⁰Additionally, “public welfare” limits protection of “cultural and artistic activities” , under which manga is protected, that could detract from society¹⁹¹ and 2014 Amendment, Article 98 (2), mentions that in protecting children international direction, necessitating forbiddance of pictorial child pornography, has influence.¹⁹² Thus, Japan’s status as a party to treaties establishes an obligation to overrule the 2014 Amendment.

Several solutions for rectifying these breaches are possible. However, an offered simulacrum to emulate is legislation of the United Kingdom, offering solutions to each conflict. Albeit, statutory

¹⁸³ Cismas, I. (2014), supra nota 87, page 233 and UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011), supra nota 71, paragraphs 41 (d), 4

¹⁸⁴ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016), supra nota 48, page 5

¹⁸⁵ Ibid., paragraph 13 and HumanRightsNow. (2018), supra nota 2, pages 3-6, 20

¹⁸⁶ Tobin, J. (2019), supra nota 59, pages 1316-1317, 1320 and Greijer, S. abd Doek, J. (2016), supra nota 59, pages 19, 38

¹⁸⁷ Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016), supra nota 48, paragraphs 13, 19 60, 74 (iv) and HumanRightsNo. (2018), supra nota 2, pages 19-29

¹⁸⁸ United Nations, 11. Convention on the Rights of the Child, New York: 20 November 1989, supra nota 19, Article 34 (a) and Tobin, J. (2019), supra nota 59, pages 1316-1321

¹⁸⁹ Cismas, I. (2014), supra nota 87, page 223 and UN Committee on the Rights of the Child (CRC), General comment No. 13 (2011), supra nota 71, paragraphs 41 (d), 4

¹⁹⁰ Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography. (2002), supra nota 37, Article 2 (c)

¹⁹¹ Takeuchi, C. (2015), supra nota 15, page 229

¹⁹² Oda. H. (2009), supra nota 7, pages 41-42

law is Japan's fundament¹⁹³, while United Kingdom's base foundation is non-statutory law¹⁹⁴, decisions of the court are considered legal sources.¹⁹⁵ Making legislation of the United Kingdom compatible. United Kingdom covers "chakuero" under "indecenty." As, the definition is circumambient preventing it from excluding child pornography material due confined wording¹⁹⁶, which would illuminate contingency of legislation in Japan and resolve the excluding consequence of restricted phrasing. Furthermore, indecenty provides clear boundaries regarding its use, through judicial decisions, which quarantees it not being misconstrued on ideals, rather factoring injuriousness of material.¹⁹⁷ Regarding conflicting area of accessing and viewing child pornography, United Kingdom's legislation defines and criminalizes such conducts under "to take, to make." The definition is comprehensive, including material that does not download to a system, containing constraints expressed in an explicit manner, not reaching too wide.¹⁹⁸ Finally, in the United Kingdom pictorial child pornography is a criminal offence and clear definitions and limits are provided. Fictional minors are included, as are methods of creation and depicted deeds amounting to child pornography.¹⁹⁹ Denoting the scope of criminalization regarding child pornography. Containing a caveat regarding images not fully conforming to typical depiction of children, yet depicting a minor.²⁰⁰ Thus, altogether model of the United Kingdom could be advantageous for Japan. Other solutions, are essential in ensurance of disposure of child pornography. Such as, establishing a "blocking adress system", accounting for necessity of securement of fundamental rights²⁰¹, internal regulation within pornography industry²⁰², implementation, to expose illegitimate material, of equipment and cooperative investigations by seeking cyberspace using technical apparatus.²⁰³ Ultimately, a model from the United Kingdom in tandem with other offered solution methods could make Japan's legislations criminalization and definition of child pornography compliant.

¹⁹³ Oda. H. (2009), supra nota 7, page 42

¹⁹⁴ Corbin, A. L. (1912) supra nota 156, pages 74-75

¹⁹⁵ Oda. H. (2009), supra nota 7, page 42

¹⁹⁶ Gillespie, A. A. (2010), supra nota 163, pages 511-512

¹⁹⁷ Sweeney, J. (2012), supra nota 157, pages 127-128 and 144 and Akdeniz, Y. (1996), supra nota 166, page 248

¹⁹⁸ Court of Appeal (Criminal Division), No. 2001/00251/YI 2001/06320/23,[2002], supra nota 169, paragraphs 1-3 and Court of Appeal (Criminal Division), No: 200606031/ D3, R v Harrison, 5 December 2007, supra nota 169, paragraphs 1-3 and 18-20

¹⁹⁹ Nair, A. (2010), supra nota 174, pages 226-227

²⁰⁰ Antoniou, A. (2013), supra nota 158, page 343

²⁰¹ McIntyre, T. T. (2010), supra nota 171, pages 211-214

²⁰² HumanRightsNow. (2018), supra nota 2, pages 7-9

²⁰³ Brown, J. (Ed.). (2017), supra nota 173 page 163 and Europol, Press Release 18 April 2017, supra nota 172,

LIST OF REFERENCES

Books:

1. Akdeniz, Y., & Akdeniz, D.Y. (2008). Internet child pornography and the law: National and international responses. Taylor & Francis Group. ProQuest Ebook Central, Accessible: <https://ebookcentral.proquest.com/lib/tuee/detail.action?docID=438524>. 22 March 2021
2. Brown, J. (Ed.). (2017). Online risk to children: Impact, protection and prevention. ProQuest Ebook Central, Accessible: <https://ebookcentral.proquest.com/lib/tuee/detail.action?docID=4857683>. 19 March 2021
3. Cismas, I. (2014). Religious actors and international law. OUP Oxford United Kingdom.
4. Gillespie, A. A. (2011). Child pornography law and policy, Routledge, USA and Canada by Routledge 7 II Third Avenue, New York.
5. Haley, J. O. (1998). The spirit of Japanese law. United States: University of Georgia Press Athens.
6. Hindman, H. D. (2009). The world of child labour: an historical and regional survey. Armonk, N. Y: M.E. Sharpe. Taylor & Francis Group. ProQuest Ebook Central, Accessible: <https://ebookcentral.proquest.com/lib/tuee/detail.action?docID=1899940>., 10 February 2020
7. Muntarbhorn, V. (2007). A commentary on the united nations convention on the rights of the child, Article 34: sexual exploitation and sexual abuse of children. [A. Alen, J. Vande Lanotte, E. Verhellen, F. Ang, E. Berghmans, & M. Verheyde, Eds.] [Vol. 34.]. Leiden: Martinus Nijhoff Publishers. BRILL. ProQuest Ebook Central, Accessible: <https://ebookcentral.proquest.com/lib/tuee/detail.action?docID=468284>. 5 March 2021
8. Oda, H. (2009). Japanese law 3rd ed. United States: Oxford University Press Inc., New York.
9. Sugimoto, Y. (2014). An introduction to Japanese society. (4th ed.) Cambridge University Press.
10. Sugimoto, Y. (2009). The Cambridge companion to modern Japanese culture. United States: Cambridge University Press.
11. Tobin, J. (2019). The UN convention on the rights of the child: a commentary, Oxford Commentaries on International Law. Oxford University Press.
12. Vandenhoe, W., Erdem Turkelli, G., and Lembrechts, S. (2019). Children's rights: a commentary on the convention on the rights of the child and its protocols. Celtenham: Edward Elgar Publishing UK.

Journal Articles:

13. Akdeniz, Y. (1996). Computer pornography: comparative study of the us and uk obscenity laws and child pornography laws in relation to the internet. *International Review of Law, Computers & Technology*, 10 (2), 235-262.
14. Antoniou, A. (2013). Possession of prohibited images of children: Three years on. *Journal of Criminal Law*, 77 (4), 337-354.
15. April, K. (2012). Cartoons aren't real people too: Does the regulation of virtual child pornography violate the first amendment and criminalize subversive thought. *Cardozo Journal of Law Gender*, 19 (1), 241-272.
16. Beer, L. W. (1990). Freedom of expression: The continuing revolution. *Law & Contemp. Probs.*, 53(2), 39-70.
17. Beer, L. W. (1968). The public welfare standard and freedom of expression in japan. *Wash. L. Rev. & St. B. J.*, 43 (5), 1059-1128.
18. Corbin, A. L. (1912). What is the common law. *American Law School Review*, 3 (2), 73-75.
19. Crandall, D. (1992). Obscenity Doctrines of Japan and the United States Compared. *ILSA J of Intl L*, 15, 1-32.
20. Doyle, M. (1999). Bad apples in cyberspace: The sexual exploitation and abuse of children over the internet. *Whittier Law Review*, 21 (1), 119-146.
21. Eko, L. (2009). Suffer the virtual little children: The european union, the united states, and international regulation of online child pornography. *University of Baltimore Journal of Media Law and Ethics*, 1 (1-2), 107-153.
22. Engle, E. (2011). The convention on the rights of the child. *QLR*, 29 (3), 793-820.
23. Gillespie, A. A. (2010). Defining child pornography: challenges for the law. *Child and Family Law Quarterly*, 22 (2), 200-222.
24. Gillespie, A. A. (2010). Sentences for offences relating to indecent photographs. *Journal of Criminal Law*, 74 (6), 510-515.
25. Good, M. H. (1985). Freedom of expression in comparative perspective: Japan's quiet revolution, *Human Rights Quarterly*. 7 (3), 429-445.
26. Hahn, E. J. (1981). The rights of newspaper reporters and the public welfare standard in japan. *California Western International Law Journal*, 11 (2), 189-222.
27. Ishibashi, K. (2015). Implementation of international law in japanese courts. *Korean Journal of International and Comparative Law*, 3 (2), 139-170.

28. Jones, L. M. (1998). Regulating child pornography on the internet the implications of Article 34 of the united nations convention on the rights of the child. *International Journal of Children's Rights*, 6 (1), 55-80.
29. Kalim, A. (2013). Adressing the gap in international instruments governing internet child pornography. *CommLaw Conspectus: Journal of Communication Law and Policy*, 21 (2), 428-452.
30. Khan, K. (2000). Child pornography on the internet. *Police Journal*, 73 (1), 7-17.
31. Leary, M. G. (2009). Death to child erotica: How mislabeling the evidence can risk inaccuracy in the courtroom. *Cardozo Journal of Law Gender*, 16 (1), 1-40.
32. McIntyre, T. T. (2010). Blocking child pornography on the internet: European union developments. *International Review of Law, Computers & Technology*, 24 (3), 209-222.
33. McLelland, M. (2005). The world of Yaoi: The Internet, Censorship and the Global Boys Love Fandom. *Australian Feminist Law Journal*, 23, 61-78.
34. Nair, A. (2010). Real porn and pseudo porn: The regulatory road. *International Review of Law, Computers & Technology*, 24 (3), 223-232.
35. Noblett, K. (2015). Caging uncertainty: Responsible reform of federal child pornography sentencing guidelines. *Northern Kentucky Law Review*, 42 (1), 65-88.
36. Optional protocol to the convention on the rights of the child on the sale of children, child prostitution and child pornography. (2002). *Netherlands Quarterly of Human Rights*, 20 (3), 387-392.
37. Port, K. L. (1991). The japanese international law revolution: International human rights law and its impact in japan. *Standfords Journal of International Law*, 28 (1), 139-172.
38. Schroeder, L. P. (2015). Around the world: Protecting victims of child pornography in japan. *Children's Legal Rights Journal*, 35 (2), 197-[ii].
39. Sweeney, J. (2012). Sexting and freedom of expression: comparative approach. *Kentucky Law Journal*, 102 (1), 103-146.
40. Takeuchi, C. (2015). Regulating lolicon: Towards Japanese compliance with its international legal obligations to ban virtual child pornography. *Georgia Journal of International and Comparative Law*, 44 (1), 195-[ii].
41. Tobin, J. (2010). Seeking to persuade: a constructive approach to human rigths treaty interpretation. *Harvard Human Rigths Journal*, 23 (1), 1-50.
42. Trager, R.; Obata, Y. (2004). Obscenity decisions in the Japanese and united states supreme courts: Cultural values in interpreting free speech. *U. C. Davis Journal of International Law Policy*, 10 (2), 247-276.

43. United Nations, 11. Convention on the Rights of the Child, New York: 20 November 1989, Treaty series, Vol 1577.
44. Vienna Convention on the Law of Treaties. (1969-1973). Philippine Yearbook of International Law, 2, 117-151.
45. Williams, K. S. (2003). Controlling internet child pornography and protecting the child. Information Communications Technology Law, 12 (1), 3-24.

Internet/Electronic sources:

46. Greijer, S. and Doek, J. (2016) Luxembourg Guidelines, Terminology guidelines for the protection of children from sexual exploitation and abuse, Adopted by the Interagency Working Group in Luxembourg, 28 January, 2016, Luxembourg: ECPAT International and ECPAT Luxembourg. Accessible: <http://luxembourguidelines.org/english-version/> , 11 January 2021
47. HumanRightsNow. (2018). Report on child pornography in japan. Accessible: <http://hrn.or.jp/eng/wp-content/uploads/2018/02/HRN-Child-Pornography-Report-2018.02.07.pdf> , 24 November 2020
48. Ryu, K. (assistance from Andrea Varella). (2018). Japan, ECPAT, Country overview: A report on the scale scope and context of the sexual exploitation of children. Accessible: <https://www.ecpat.org/wp-content/uploads/2018/04/ECPAT-Country-Overview-Japan.pdf>. 24 November 2020
49. Ugo Cedrangolo. (2009). The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography and the jurisprudence of the Committee on the Rights of the child. Innocenti Working Paper No. 2009-03. Florence, UNICEF Innocenti Research Centre. Accessible: https://www.unicef-irc.org/publications/pdf/iwp_2009_03.pdf , 6 November 2020
50. Witting, S. (2016). Regulation of Child Online Sexual abuse: Legal Analysis of International Law and Comparative Legal Analysis. Accessible: https://www.unicef.org/namibia/na.COP_Legal_Analysis.pdf , 9 January 2021

Normative documents:

51. Act on Regulation and Punishment of Acts relating to child prostitution and child pornography, and the protection of children. Act No 52 of May 26. 1999, translation from Japanese Law Translation. Accessible: <http://www.japaneselawtranslation.go.jp/law/detail/?id=2895&wm=2&re=> , 16 January 2021
52. Committee on the rights of the child. (2014). Report of the 2014 day of general discussion: „digital media and childrens’ rights.“ Accessible:

<https://www.ohchr.org/Documents/HRBodies/CRC/Dicussion/2014/DGD-report.pdf> , 15 January 2021

53. Council of Europe. Convention on Cybercrime. ETS No. 185. Charts of signatures and ratification of Treaty 185. Japan. Accessible: https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/signatures?p_auth=OjN6AYbX , 30 December 2020
54. Court of Appeal (Criminal Division), No: 200606031/D3, R v Harrison, 5 December 2007, 1 cr. App. R. 29
55. Court of Appeal (Criminal Division), No. 2001/00251/YI 2001/06320/Z3, [2002] EWCA Crim 683, 2002 WL 237226, 7 March 2002, R v Smith, 1 cr. App. R13
56. Court of Appeal (Criminal Division), R v Stamford (John David) [1972] 2Q. B 391, [1972], [1972] 2 W.L.R. 1055, 29 February 1972.
57. Divisional Court, Atkins v DPP [2000] 1 W.L.R 1427, [2000] 3 WLUK 213, 8 March 2000
58. ETS No. 185. (2001). Convention on Cybercrime, Explanatory report, Budapest. Accessible: https://www.oas.org/juridicio/english/cyb_pry_explanatory.pdf , 15 January 2021
59. Greijer, S. and Doek, J. Interagency working group, ECPAT (2019). Explanatory Report to the Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Accessible: <https://www.ecpat.org/wp-content/uploads/2019/09/OPSC-Guidelines-Explanatory-Report-ECPAT-International-2019.pdf> . , 15 January 2021
60. Legislative History of the convention on the rights of the child. Volume II (2007). United Nations, New York and Geneva. Accessible: <https://www.ohchr.org/Documents/Publications/LegislativeHistorycre2en.pdf> , 7 September 2020
61. Ministry of foreign affairs of japan. (2014). Fourth periodic report by the government of japan under article 40 paragraph 1 (b) of the International Covenant on Civil and Political Rights. Accessible: https://www.mofa.go.jp/policy/human/civil_rep4/general.html#gl , 22 January 2021.
62. Reservations and Declarations for Treaty No. 185 – Convention on Cybercrime, (2020). Accessible: <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185/declarations> , 23 February 2021
63. Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography. (2016). Report of the special rapporeur on the sale of children, child prostitution and child pornography on her visit to japan, U.N. Doc. A/HRC/31/58/Add.1 Accessible: <https://undocs.org/A/HRC/31/58/Add.1> , 9 January 2021
64. UN Convention on the rights of the child. (2019). Guidelines regarding implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. CRC/C/156 Accessible:

https://www.ohchr.org/Documents/HRBodies/CRC/CRC.C.156_OPSC%20Guidelines.pdf , 15 January 2021

65. UN Committee on Rights of the Child (CRC), General comment No. 13 (2011): The rights of the child to freedom from all forms of violence, 18 April 2011, CRC/C/GC/13, Accessible: <https://www.refworld.org/docid/4e6da4922.html> , 12 January 2021

66. UN Human Rights Council Report, Report of the Special Rapporteur on the Sale of children, child prostitution and child pornography, Najat M'jid Maalla, 13 July 2009, A/HRC/12/23, Accessible: <https://www.refworld.org/docid/4ab0d35a2.html> , 9 January 2021

67. United Nations Convention on the Rights of the Child, Committee on the Rights of child. (2019). Concluding observations on the combined fourth and fifth periodic report of Japan, U.N. Doc. CRC/C/JPN/CO/4-5, Accessible: <https://undocs.org/CRC/C/JPN/CO/4-5> , 9 January 2021

68. United Nations (1989). Convention on the rights of the child, Treaty Series, vol. 1577. Accessible: <https://treaties.un.org/doc/Publications/MTDSG/Volume%201/Chapter%20IV/IV-11.en.pdf> , 30 December 2020

69. UN High Commissioner for Refugees (UNCHR), Yokohama Global Commitment (2001). 20 December 2001, Accessible: <https://www.refworld.org/docid/3f9fe2bd4.html> , 12 January 2021

70. United Nations Human Rights Office of the high Commissioner. (1996-2014). Ratification of 18 International Human Rights Treaties: Japan. Accessible: <https://indicators.ohchr.org/> , 30 December 2020

71. World Congress III. (2008). The Rio de Janeiro Declaration and Call for Action to prevent and Stop Sexual Exploitation of children and Adolescents. Accessible: https://www.ecpat.org/wp-content/uploads/2016/04/WCIII_Outcome_Document_Final.pdf , 12 January 2021

Other sources:

72. Europol, Press Release 18 April 2017, 'Global action tackles distribution of child sexual exploitation images via WhatsApp: 39 arrested so far. Accessible: <https://www.europol.europa.eu/newsroom/news/global-action-tackles-distribution-of-child-sexual-exploitation-images-whatsapp-39-arrested-so-far> accessed 4 February 2021.

73. Kyodo, Staff report, Japan Times (2016). Graphic designer found guilty of child pornography in japan. Accessible: <https://www.japantimes.co.jp/news/2016/03/16/national/crime-legal/graphic-designer-found-guilty-child-pornography-japan/#.XhWdcBtS:IU> , 14 January 2021

Appendix 4. Non-exclusive licence

A non-exclusive licence for reproduction and for granting public access to the graduation thesis¹

I _____ (*author's name*)(*date of birth:.....*)

1. Give Tallinn University of Technology a permission (non-exclusive licence) to use free of charge my creation

(*title of the graduation thesis*)

supervised by _____,

(*name of the supervisor*)

1.1. to reproduce with the purpose of keeping and publishing electronically, including for the purpose of supplementing the digital collection of TalTech library until the copyright expires;

1.2. to make available to the public through the web environment of Tallinn University of Technology, including through the digital collection of TalTech library until the copyright expires.

2. I am aware that the author will also retain the rights provided in Section 1.

3. I confirm that by granting the non-exclusive licence no infringement is committed to the third persons' intellectual property rights or to the rights arising from the personal data protection act and other legislation.

¹ *The non-exclusive licence is not valid during the access restriction period with the exception of the right of the university to reproduce the graduation thesis only for the purposes of preservation.*